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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

GREGORY MAR,

Petitioner and Appellant,

v.

VERONICA LIGNE,

Respondent.

A158768

(San Francisco County  
Super. Ct. No. FDV-19-814406)

Gregory Mar appeals from an order requiring him to pay the attorney fees of his sister Veronica Ligne as a sanction against him under Family Code section 271. We conclude that Mar did not receive notice that the court was considering sanctions under Family Code section 271 and that findings of fact underlying the fee award are not supported by substantial evidence; accordingly, we reverse.

**FACTUAL AND PROCEDURAL BACKGROUND**

Mar, who was involved in a probate court dispute with Ligne, initiated a family court proceeding by filing a request for a domestic violence restraining order against Ligne in January 2019.<sup>1</sup> Mar was represented by counsel in the probate dispute, but represented himself in the family court action (the DVRO action).

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<sup>1</sup> All the events described in this summary occurred in 2019.

The family court first heard evidence in the DVRO action on May 10. In the course of the hearing, the family court was presented with an unrelated matter that caused it to continue the proceeding to May 21.

A. *May 21 Hearing*

Mar's probate attorneys made a special appearance at the continued evidentiary hearing in the DVRO action. They asked the family court to continue the hearing for two to three weeks, stating that they had learned the previous day that Ligne was being represented in the DVRO action by the same law firm that was representing her in the probate action. A petition to disqualify the firm was pending in the probate court, and Mar's attorneys argued that the firm should be disqualified in the DVRO action as well.

Ligne's attorney responded that there were no grounds for disqualification and that in any event the issue had been waived in the DVRO action. He opposed a continuance, which he said would be a financial burden for Ligne with respect to attorney fees and lost wages.

The family court continued the hearing to June 10 and set a schedule for the parties to brief Mar's oral motion for disqualification. The court announced it would consider a request from Ligne for attorney fees and lost wages resulting from the May 21 appearance, and asked Ligne's counsel to submit such a request, supported by declarations. Neither Ligne's counsel nor the family court made any reference to Family Code section 271 or any other statute that would support an award of attorney fees. (All further statutory references are to the Family Code.)

B. *June 10 Hearing*

In keeping with the schedule set by the family court, the parties briefed Mar's motion to disqualify Ligne's counsel. Ligne's opposition brief argued the merits and concluded with the following sentence: "The motion was

brought for an improper purpose, it should be denied, and [Mar] should be ordered to pay the reasonable attorney fees, and the lost wages of [Ligne] and her witness incurred as a result of his untimely interjection of the issue into the proceedings.” The opposition was supported by a declaration in which Ligne’s attorney stated he billed Ligne for 3.5 hours spent for the May 21 hearing, and claimed \$1,225 in fees for those services.<sup>2</sup> He also stated that Mar or his attorneys should be required to pay an additional \$3,500 in fees to his firm on Ligne’s behalf, as half the fees she incurred as a result of his work on the disqualification issue. The request for the additional \$3,500, but not the request for \$1,225, was specifically premised on the grounds that Ligne incurred those fees “as a result of [Mar’s] untimely election to raise an objection to my representation of [Ligne] in this matter.” Neither the brief nor the declaration cited any authority supporting an award of attorney fees.

At the June 10 hearing, the family court informed the parties that its tentative ruling was to deny the motion for disqualification, explained its views on the grounds for denial, and invited the parties to argue the issue. Mar’s counsel began by asking the court to continue the DVRO action until the probate court had addressed the disqualification issue, arguing that there would be no prejudice to Ligne from a further continuance. The family court noted that Ligne’s counsel had raised the issue of Ligne’s lost wages and the attorney fees she incurred, and asked Mar’s counsel to address prejudice in connection with those two items.

Mar’s counsel did not contest the amount of fees billed to Ligne. He said that he and his cocounsel were representing Mar on a pro bono basis through a program of the Bar Association of San Francisco and explained

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<sup>2</sup> The record reflects that Ligne submitted a declaration to support a claim for lost wages, but the court did not order any payment of lost wages.

that Mar “couldn’t pay any award of attorneys’ fees. He doesn’t have the means. There is a cost waiver in both proceedings.” In the course of the argument, Ligne’s counsel stated that he was not being paid by Ligne on a current basis and said there was a risk he would never be paid.

The family court denied the request for continuance and heard argument regarding the merits of the motion to disqualify. After arguing the merits, Mar’s counsel expressed readiness to argue the attorney fee issue, to which the family court responded, “Why don’t we take that up next.” As it happened, however, the issue was not taken up during the remainder of the hearing.

After hearing from both sides, the family court *granted* the disqualification motion from the bench and said that a written order would issue. At that point Mar’s specially appearing counsel were excused, and the family court held the evidentiary hearing, with Ligne’s counsel remaining for the sole purpose of playing a video that Ligne wanted to use as evidence.

At the conclusion of the evidentiary hearing, the family court stated it would deny Mar’s request for a restraining order and would issue a written order on disqualification and the request for attorney fees. At no point during the proceedings was there any mention of authority that would support a fee award.

### C. *Order and Amended Order*

On July 9, the court issued an “Order Granting Motion to Disqualify.” A week later, Ligne wrote a letter to the family court judge, copied to Mar’s counsel, stating, “When we were in court, you said that you would consider making an order requiring [Mar] to pay me for the reasonable value of my working time lost, and perhaps the fees of my attorney incurred as a result of

his delay in raising the claimed conflicts issue. Your order does not address that issue, and I am wondering whether a further order will be issued.”

On August 16, the court issued an “Amended Order Granting Motion to Disqualify,” in which the following paragraph was added to the previously-issued order: “The Court further orders [Mar] to pay attorney’s fees and costs in the amount of \$1,225 for Family Code section 271 sanctions based upon Petitioner’s failure to timely raise the issue of attorney disqualification in the DVRO [Action] and the [Declaration of Ligne’s attorney]. The Court has considered the parties’ income, assets, and liabilities and has determined that the amount awarded does not impose an unreasonable financial burden on [Mar]. [Mar] shall pay the attorney’s fees and costs within 45 days of this order.”

Mar timely appealed. Ligne did not file a respondent’s brief, and oral argument was waived.<sup>3</sup> Therefore, we decide the appeal on the record and Mar’s opening brief. (Cal. Rules of Court, rule 8.220(a)(2).)

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<sup>3</sup> Ligne, who is representing herself in this appeal, did not file a respondent’s brief, but instead filed a four-page letter to this court which includes no citations to the record, and which concludes with the sentence, “Please stop this appeal of theirs and I would be willing to forgo the \$1225 at this time to end this madness.” Ligne subsequently informed Mar’s counsel that she would not be filing a respondent’s brief; Mar so informed the court, copying Ligne. Mar filed a reply brief arguing that Ligne’s letter should be disregarded, rather than treated as a respondent’s brief or motion to dismiss because it includes no citations to the record, it fails to rebut the arguments on appeal, and Ligne’s statement that she will forgo payment of the sanctions “at this time” does not constitute a waiver of her right to the money. Ligne’s letter plainly does not meet the requirements for a respondent’s brief, and in any event Ligne has disclaimed any intent to file a respondent’s brief; accordingly, we decline to treat the letter as a respondent’s brief.

## DISCUSSION

The sole issue on appeal is whether the family court erred in awarding Ligne sanctions under section 271.

### A. *Applicable Law and Standard of Review*

Section 271 authorizes the family court to “base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney’s fees and costs pursuant to this section is in the nature of a sanction.” (§ 271, subd. (a).) Any order that requires a party to pay attorney fees under the Family Code requires the court to “first determine that the party has or is reasonably likely to have the ability to pay.” (§ 270.) Section 271 requires the court to “take into consideration all evidence concerning the parties’ incomes, assets, and liabilities” and prohibits the court from making an award “that imposes an unreasonable financial burden on the party against whom the sanction is imposed.” (§ 271, subd. (a).) An award under section 271 “shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard.” (*Id.*, subd. (b).) Although section 271 does not specify the form of notice to be provided, the notice must specify the code section or court rule that is relied on, and the grounds and conduct for which the sanctions are sought. (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1529 (*Davenport*).)

We review an award of attorney fees under section 271 for abuse of discretion and review any findings of fact made in connection with the award

under the substantial evidence standard. (*Parker v. Harbert* (2012) 212 Cal.App.4th 1172, 1177.)

B. *Analysis*

On appeal, Mar argues that the sanctions order should be reversed for several reasons; we need not address them all.

Our review of the record supports Mar's argument that he did not receive the notice and opportunity to be heard that is required for sanctions to be imposed under section 271. (§ 271, subd. (b).) The family court never stated that it was considering sanctions under section 271, nor did Ligne or her counsel ever state that Ligne sought sanctions under section 271. Instead, the first reference in the record to section 271 is in the family court's amended order awarding the sanctions. Thus Mar did not receive the required notice (*Davenport, supra*, 194 Cal.App.4th at p. 1529); as a result he was not on notice that he should present evidence of his ability to pay the sanctions, including evidence concerning his income, assets and liabilities. (§ 270; § 271, subd. (a).) In addition, Mar's attorney was stopped by the court upon offering to argue the issue of attorney fees.

Moreover, our review of the record supports Mar's argument that there is no evidence, substantial or otherwise, to support a finding that Mar has the ability to pay the sanctions, or to support a finding that the award is not an unreasonable burden on him. (§ 270; § 271, subd. (a).) The only evidence in the record on Mar's ability to pay was to the contrary: at the May 10 hearing, Mar testified that it was hard for him "to make ends meet financially," and the record shows that Mar had been granted a waiver of court fees and costs. Further, during argument at the June 10 hearing, Mar's counsel represented that Mar did not have the means to pay any award of

fees, that Mar had been granted a cost waiver in the probate proceeding as well, and that Mar's counsel were volunteering their time.

In these circumstances, the family court erred in ordering Mar to pay Ligne's attorney fees under section 271.

### **DISPOSITION**

The sanctions order is reversed. The parties shall bear their own costs on appeal.



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Miller, J.

WE CONCUR:

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Kline, P.J.

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Stewart, J.

A158768, *Mar v. Ligne*